

802.1

[REDACTED]

August 20, 1990

DELIVERED BY HAND

Ms. Nancy Ovuka
The Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 303
Washington, D.C. 20580

Re: Exemption Under the Hart-Scott-Rodino
Antitrust Improvements Act of 1976

Dear Ms. Ovuka:

In accordance with our telephone conversation on August 16, 1990, we are writing to confirm the staff's oral advice, based on information furnished by us to the staff during that conversation, that the transaction described below (the "Transaction") would be exempt from the premerger notification requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act").

Proposed Transaction. Our client, Bank A, is a federally-chartered, FDIC-insured stock savings bank with total assets of approximately \$[REDACTED] at June 30, 1990. Bank A maintains a nationwide VISA and MasterCard credit card program with approximately [REDACTED] accounts and total receivables (consisting of account balances, finance charges and other charges), including receivables transferred to credit card trusts serviced by Bank A, of approximately \$[REDACTED] as of June 30, 1990. Through its credit card program, Bank A offers both standard and premium credit card accounts.

Based on figures published by VISA U.S.A., Inc. and MasterCard International Inc., there were over 145 million VISA and MasterCard credit card accounts, with total receivables of approximately \$133 billion, in circulation nationally as of December 31, 1989.

Bank A proposes to sell to Bank B approximately [REDACTED] VISA and MasterCard credit card accounts with total receivables of

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approximately [REDACTED] million at the time of sale (the "Accounts to be Sold"). The Accounts to be Sold will include both standard and premium credit card accounts. They will be selected from a qualifying pool of accounts meeting specified credit and other criteria with cardholders in most states of the continental United States. Following the Transaction, Bank A will continue to manage the accounts of its existing cardholders in all such states and will continue to solicit new standard and premium credit card accounts in all such states in accordance with its customary operating policies.

The Transaction represents the sale of a cross-section of approximately [REDACTED] of Bank A's total portfolio of credit card accounts. Following the Transaction, Bank A will continue to maintain a nationwide credit card program with cardholders in every region of the United States. Bank A will continue to offer both standard and premium credit card accounts.

Prior Transactions. In letters to the staff dated August 17, 1989 and May 11, 1990, we described two similar transactions by Bank A. The 1989 and 1990 transactions involved sales by Bank A of credit card accounts with outstanding receivables balances of approximately [REDACTED] million and [REDACTED] million, respectively. Bank B was not the purchaser of such accounts in either transaction. Bank A has continued to generate new credit card relationships to replace those transferred in these two sales.

Discussion. Based on the foregoing, we believe that the Transaction does not represent the sale of a "business" or of "substantially all of the assets of . . . an operating division" of a business within the meaning of 16 C.F.R. § 802.1(b). We believe the Transaction constitutes a transfer of assets "in the ordinary course of business" and therefore is exempt under Section 7A(c)(1) of the Act from the premerger notification requirements under the Act.

We understand from our telephone conversation with the staff on August 16, 1990 that, based on the facts of the Transaction as set forth in this letter, the staff concurs with the foregoing interpretation of the Act. Unless we receive a contrary indication from the staff following its receipt of this letter, we will so advise Bank A.

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If you have any questions regarding this matter or need any additional information, please do not hesitate to telephone the undersigned at [REDACTED]

Very truly yours,
[REDACTED]
[REDACTED]

[REDACTED]
cc: Mr. Richard B. Smith
[REDACTED]